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GOODWIN PROCTER LLP
103 EISENHOWER PARKWAY
ROSELAND NJ 07068-1757

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OFFICE OF PETITIONS

In re Application of :
Schumann et al. :
Application No. 09/484,121 : ON PETITION
Filed: 13 January, 2000 :
Att'y Docket No. 103888-307-NP :

This is a decision on the petition under 1.137(b),¹ filed on 3 September, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 24 June, 2004, for failure to file a proper reply to the final Office action mailed on 23 December, 2003, which set a three (3) month shortened statutory period for reply. On 3 June, 2004, a three (3) month extension

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

of time was filed accompanied by an amendment after final rejection. The amendment was found not to place the case in condition for allowance, however, and an Advisory Action was mailed on 28 June, 2004. Notice of Abandonment was mailed on 26 July, 2004.

Petitioner has submitted an amendment after final rejection and a Notice of Appeal, as the required reply.

The examiner has determined that the amendment after final filed with the present petition would place *prima facie* place the case in condition for allowance. As such, the amendment will be considered the reply, and the Notice of Appeal will not be entered, but will be retained in the Official file. The Notice of Appeal fee will not be charged.

The petition fee of \$665.00 will be charged to counsel's deposit account, No. 06-0923, as authorized in the amendment accompanying the petition.

The application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions